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Case No: HQ18M02344

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15/05/19

**Before :**

**THE HONOURABLE MR JUSTICE WARBY**

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**Between :**

<b>Mark Anthony Allen</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>Times Newspapers Limited</b>	<b><u>Defendant</u></b>

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**Robert Sterling** (instructed by **Carruthers Law**) for the **Claimant**  
**Jonathan Scherbel-Ball** (instructed by **Legal Department, Times Newspapers Limited**) for  
the **Defendant**

Hearing date: 9 May 2019  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MR JUSTICE WARBY

**MR JUSTICE WARBY:**

1. On 14 June 2017, Grenfell Tower in West London caught fire, and a disaster followed in which many, many of its residents died. The essential facts about this terrible tragedy are notorious, and need no elaboration.
2. This libel action arises from articles relating to the Grenfell Tower disaster which were published in the hard copy and online versions of a national newspaper about three weeks later.
3. The claimant is an architect, and a member of the RIBA. At the relevant times, he was employed by Saint-Gobain Limited, a company that designs and manufactures materials for the construction industry. According to the Particulars of Claim, his job title was Habitat Technical Director. The defendant is the publisher of *The Times*.
4. On 1 July 2017, the defendant published on page 6 of the hard copy version of *The Times*, and on its website, an article headed “Grenfell cladding boss is a government adviser”. The hard copy and online versions of the article were illustrated by different photographs and captions, but the text was identical. I shall therefore refer to “the Article”.
5. The Article named the claimant, and there is no dispute that he is and would have been identified by readers as the “Grenfell cladding boss” referred to in the headline.
6. The full text of the Article in its original version is set out in the Appendix to this judgment, with paragraph numbering added for ease of reference. I have omitted photo captions, which are not material to the issues I have to decide.
7. The online version of the Article continued to be published after 1 July 2017, with one change of wording in the headline. From 2 July 2017, it was entitled “Grenfell insulation boss is a government adviser”. This was more accurate, but the change of wording is of no other significance.
8. On 21 May 2018, the claimant’s solicitors wrote to complain of the Article, alleging that it suggested that the claimant had acted corruptly. On 8 June 2018, the defendant replied, denying that contention, and advancing a positive case as to the meaning of the Article, which was said to be a non-defamatory one. The defendant stands by that position. Its meaning is as follows:

“Mark Allen, a senior representative of Saint-Gobain UK, a company involved in the manufacturer of the Celotex insulation boards fitted to Grenfell Tower, is on the Building Regulations Advisory Committee, which advises the Secretary of State on building regulations. The insulation boards are highly flammable and suspected of contributing to the Grenfell fire. Despite the fact that the product has been withdrawn from use on high-rise buildings Mr Allen remains on the Committee. There is concern that building regulations are not fit for purpose and, in the circumstances, the appointment to [the Building Regulations Advisory Committee] of Mr Allen or other members with roles

in the construction industry to this Committee may be inappropriate.”

9. On 29 June 2018, the claimant issued these proceedings. On 9 October 2018, his solicitors wrote, rejecting the defendant’s meaning but proposing a revised one of their own. The suggestion that the words bore an imputation of corruption was dropped in favour of a new meaning. On 23 November 2018, the claimant served Particulars of Claim, complaining of paragraphs 1 to 7 of the Article, which I have italicised in the Appendix. The Particulars of Claim incorporated the revised meaning, alleging that the words complained of were defamatory of the claimant in the following meanings:-

“[1] Mark Allen was the technical director of Saint-Gobain at the time of the Grenfell fire. Saint-Gobain manufactured the Celotex insulation used to clad Grenfell Tower. Celotex insulation is highly flammable and dangerous and there are strong grounds for suspecting that it was the cause of the fire. There are also strong, alternatively reasonable, grounds for suspecting that Mr Allen was responsible for the design, specification and manufacture of the Celotex insulation, which caught fire.

[2] At the time of the fire Mr Allen was also a committee member of the Building Regulations Advisory Committee, a public body that advises the Government on making Building Regulations and setting standards for the design and construction of buildings. Mr Allen, improperly, was also acting in conflict of interest by being a member of the Building Regulations Advisory Committee at the same time as serving as a director of Saint-Gobain, which was selling its products to local authorities in conjunction with the construction and repair of local authority high-rise flats.”

10. These meanings are not identical to those suggested in the letter of 9 October 2018, , but they are not materially different. I have added the numbering, which does not appear in the Particulars of Claim but reflects the way the case has been argued before me at this trial.
11. The defendant promptly applied to the Master for an order for the determination of two questions as preliminary issues in the claim. This has been the trial of those two issues, pursuant to an Order made by Master Kay QC on 29 November 2018. The issues are:-
- (1) “The meaning(s) of the words complained of at paragraphs 7 and 8 of the Particulars of Claim” (that is, paragraphs 1 to 7 of the Article);
  - (2) Whether such meaning(s) are defamatory of the claimant at common law.

### **The law**

12. A claimant makes out a cause of action for libel by proving that the defendant has published to one or more third parties a statement in permanent form that refers to and is defamatory of the claimant. Ordinarily, as here, the case is about words, and the question of whether the words are defamatory turns on their natural and ordinary

meaning or, put another way, the imputation(s) about the claimant which the words would convey to the ordinary reader.

13. A judge deciding the natural and ordinary meaning of words in a libel action is making a finding of fact, albeit of a somewhat unusual nature. The essential principles that apply were re-stated by Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [11-12]. I omit internal citations.

“11. The Court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: *Slim v Daily Telegraph Ltd* [1968] 2 QB 157, 173D– E, per Lord Diplock.

12. The following key principles can be distilled from the authorities:

- (i) The governing principle is reasonableness.
- (ii) The intention of the publisher is irrelevant.
- (iii) The hypothetical reasonable reader is not naïve, but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
- (iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
- (v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
- (vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
- (vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
- (viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would

bear if they were read in isolation (e.g. bane and antidote cases).

- (ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
- (x) No evidence, beyond the publication complained of, is admissible in determining the natural and ordinary meaning.
- (xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.
- (xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.
- (xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

14. All of these principles have been common ground at this trial, but there has been some exploration of the application to this case of principles (iii), (ix), and (xiii). In relation to the distinction between the naïve and the unduly suspicious reader, Mr Scherbel-Ball has referred me to authority that modern readers should be treated as having more discriminating judgment than has often been recognised: see *John v Times Newspapers Ltd* [2012] EWHC 2751 (QB) [19] (Tugendhat J). I agree. As to context, it is common ground that I should bear in mind the nature of the publication here. In contrast to such cases as *John v Guardian News and Media Ltd* [2008] EWHC 3066 (QB), the words complained of here were factual reporting on a grave matter, in the news pages of a serious newspaper.
15. In relation to principle (iii), there has also been debate about the difference between an implication contained in or conveyed by an article, and an inference drawn by the reader from its contents. I shall return to that. In relation to principle (xiii), I have had submissions about the extent to which the Court can and should depart from the meanings advocated by the parties. Again, I shall come back to that topic, and the related jurisprudence.
16. In the light, in particular, of principles (iv) to (x) and (xii), it is common practice among judges dealing with issues of meaning in defamation claims to read the article complained of and form a provisional view about their meaning, before turning to the parties' pleaded cases and the arguments about meaning. That is how I have approached this trial of meaning.
17. Defamation lawyers often talk of "Chase" levels of meaning, and there has been reference to them at this trial. This is a convenient shorthand way of referring to

different levels of gravity, which derives from the judgment of Brooke LJ in *Chase v News Group Newspapers Ltd* [2003] EMLR 11 [45]. Brooke LJ identified three types of defamatory allegations, broadly, (1) the claimant is guilty of the act; (2) there are reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant committed the act.

18. It is important to recall, however, that not every published statement conveys a meaning at one or other of the “Chase” levels. “Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning ...”: *Brown v Bower* [2017] EWHC 2637 (QB) [2017] 4 WLR 197 [17] (Nicklin J). As ever, all depends on the context. The first strand of the claimant’s meaning illustrates this point. The defendant’s meaning in the present case is a further illustration of a meaning that does not fit into the Chase categorisation.
19. The second preliminary issue is different in nature from the first. The relevant principles can be summarised in this way:
  - (1) At common law, a statement is defamatory of the claimant if, but only if, (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation crosses the common law threshold of seriousness, which is that it “[substantially] affects in an adverse manner the attitude of other people towards him or has a tendency so to do”: *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J).
  - (2) “Although the word ‘affects’ in this formulation might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence.”: *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB) [2016] QB 402 [15(5)].
20. By s 1(1) of the Defamation Act 2013, Parliament raised the threshold of seriousness from the *Thornton* test to one of “serious harm” to reputation, but at this trial I am not concerned with that issue.

### **Meaning**

21. Mr Sterling submits that although there must be a single meaning, it can have more than one element. That is plainly right in principle. Mr Sterling argues that in this case there are two strands to the defamatory meaning of the Article. The ordinary reasonable reader would, inevitably, understand the Article to allege (1) that there were strong, alternatively reasonable, grounds to suspect that Mr Allen was responsible for the design, specification and manufacture of the highly flammable and dangerous Celotex insulation used in the construction of the external cladding to Grenfell Tower; and (2) that Mr Allen was acting wrongly and in conflict of interest by being a member of the BRAC when he was a senior executive director of Saint-Gobain and Saint-Gobain was a contractor, chosen by Kensington Council, for installing insulation in its high-rise flats, and when he had remained as a BRAC member after the Grenfell fire.

22. There is a preliminary point to make about the first strand of the pleaded meaning. It does not, in terms, complain of an imputation of fault or culpability, but merely one of responsibility, which is a different thing. But the arguments, both written and oral, have been advanced on the footing that the claimant's first complaint is that the Article suggested there were serious or reasonable grounds for suspecting him of *fault* in connection with the Celotex insulation.
23. In support of that complaint, Mr Sterling places heavy reliance on the headline. Reminding me of Lord Nicholls' observation that "Those who print defamatory headlines are playing with fire" (*Charleston v News Group Newspapers Limited* [1995] 2 AC 65, 74), he submits that "Grenfell cladding" is a reference to the tragedy, and the word "boss" indicates that the claimant was the boss responsible for the Grenfell cladding. As to the body of the Article, the arguments proceed as follows:
- (1) References in paragraphs [1] and [2] to Mr Allen's role as a senior executive of the company that made the insulation boards for the tower, and his alleged role as "the technical director" of Saint-Gobain, are said to give rise to an "inescapable inference" that the claimant bore responsibility for the design, specification and manufacture of Celotex insulation.
  - (2) Reference in paragraph [3] to Scotland Yard's investigation is said to be enough in itself to support the "grounds to suspect" meaning.
  - (3) It is suggested that reference in paragraph [4] to the withdrawal of the product from use on high-rise buildings "strongly suggests an admission of personal fault in regard to the product on the part of Mr Allen."
  - (4) Reliance is placed on the juxtaposition of the claimant's name "as the central figure" in the Article with the Grenfell fire, which is said to be "intended to cause an emotional response ... of blame against Mr Allen".
  - (5) Mr Sterling submits that the passages in paragraphs [16] and following about "key players at Kensington Council" convey allegations of misuse of public funds, and "damn Mr Allen by association".
  - (6) There is nothing by way of antidote to the defamatory sting complained of.
24. I cannot agree with these arguments. I accept Mr Scherbel-Ball's submission that they involve departures from the pleaded case, are over-elaborate, and reflect an unduly suspicious approach. This first strand of the pleaded meaning is in my judgment strained, forced and unreasonable. I do not consider that the ordinary reasonable reader would or indeed could derive so much from so little by way of published incriminating information about the claimant. The arguments advanced for the claimant certainly do not reflect the impression the Article conveyed to me.
25. I should avoid over-elaborate analysis not only of the Article but also of the factual arguments advanced, but I should say this: (1) It is a very considerable jump from the fact that – as presented in the Article – the claimant was the technical director of the company that made the suspect panels, to the conclusion that he was personally responsible for their design and, impliedly, their known or suspected faults; that would, in context, be an important allegation, worthy of front-page treatment; a reader might

draw such a meaning from an article if it was clearly implied, but that is not the case here. It is important to recall that the point made in the headline is quite different: it links Mr Allen with a government advisory body, the BRAC. (2) I do not consider it in any way reasonable to regard the withdrawal of the panels from the market as an admission of responsibility by anyone, or any corporation, let alone by Mr Allen, the claimant. Product recalls are a well-recognised practice. They would not occur without some suspicion of fault, but do not necessarily involve an admission. (3) Mr Sterling's point about Scotland Yard overlooks the fact that there is no suggestion that the claimant is a suspect, or even under investigation. Indeed, it is not alleged that Saint-Gobin is under criminal investigation. The investigation is into the fire. (4) Reference to the "intended" effect of juxtaposition is contrary to principle (ii); of course, the meaning a reasonable reader takes from published words may be affected by what the reader thinks the writer is "getting at", but only a reader avid for scandal would infer that the author of this article was seeking to attribute to Mr Allen personal blame or responsibility for the faulty and fatal cladding. Contrary to Mr Sterling's submissions, the Article is not about who is to blame. (5) No reasonable reader would infer that there were serious or any grounds to suspect Mr Allen of anything, merely on the basis of association. (6) this purported meaning does not engage the "bane and antidote" principle, but rather raises the question of whether there is any, and if so what, "bane": cf. *Feyziyev* [31].

26. I have mentioned implications and inferences. Mr Scherbel-Ball submits that there is an important difference. Relying on dicta of Nicklin J in *Tinkler v Ferguson* [2018] EWHC 3563 (QB) [37] and *Koutsogiannis* [17], he argues that a meaning that consists of words which are neither stated nor implied by the words complained of, but represent an inferential deduction by the reader dependent on the individual's moral values, is not part of the natural and ordinary meaning. He suggests that this is a point of significance, in this case, because the claimant's meanings are all inferential and dependent upon unreasonable inferences. Mr Sterling suggests that this is an artificial and unreal distinction, which on a proper analysis finds no support in the authorities, and in any event has no application here.
27. I believe Mr Scherbel-Ball's reliance on *Tinkler* and *Koutsogiannis* is misplaced, as both the passages cited are concerned with implied judgments, opinions, or comments; but I do think there is something in what he says.
28. It is clear law that the ordinary meaning of words includes what the reasonable reader would read into them. This is sometimes called an inferential meaning. In the classic passage in *Lewis v Daily Telegraph* [1964] AC 234, 258 Lord Reid made clear that the natural and ordinary meaning of words includes "what the ordinary man would *infer* from" the words complained of. But at 260 he also spoke of "what the ordinary man, not avid for scandal, would *read into the words complained of*..." (The emphasis is mine). Lord Reid plainly meant the same thing in both passages. At 277-278, Lord Devlin spoke of "the implication" of words, which "the layman reads in ... much more freely" than a lawyer. To my mind, their Lordships were using different words to refer to the same process. The words infer and imply are often used as if they were interchangeable. There clearly is, however, a distinction in principle between an implication conveyed by written words, and something that is inferred from them. The first is something conveyed to the reader by the words used by the writer; the second is a conclusion drawn by the reader as a result of a process of deductive reasoning



undertaken by him or her. It is also, I think, a distinction which can be important in practice, because an implication can only flow from what is expressly stated, whereas the basis for an inference may include something extraneous. It might be an extraneous fact, added to the reasoning process by the reader. Or it could be a religious, moral or political value, to which the reader adheres, which is what I think Nicklin J was alluding to in the passages relied on by Mr Scherbel-Ball. Maintaining the focus on implication, rather than inference, may help ensure that the Court does not arrive at a meaning which is unreasonable because it does not emerge from the words themselves.

29. Interesting though all this is, however, I do not believe it makes a difference in relation to the first strand of the claimant's meaning. I do not accept that, on any view, the Article conveyed the first strand of the meaning complained of, or any other similar meaning at any Chase level, or any other level, to the effect that the claimant bore, or may have borne, responsibility for the design and manufacture of the panels, let alone the fire at Grenfell Tower. The Article does not implicate the claimant in, nor would it create in the mind of any reasonable reader any cloud of suspicion that he was or might be guilty of, any culpable conduct related to the causes of the fire. No such imputation is implicit in what is stated in the Article. No such meaning could reasonably be inferred from it.
30. The Article identifies Celotex as a material which has been tested and found wanting, and suggests that the product is suspected, on reasonable grounds, of being implicated in the spread of the fire. It names the claimant, as a senior executive of the company that is responsible for the manufacture of that product. But it does not impute that there are strong, or reasonable grounds, or that there is any other basis, for suspecting that the claimant had a culpable role in the design, specification, or manufacture of the Celotex insulation, or that there were any reasonable or other grounds to investigate whether that is so. If any such meaning was taken away by a reader of the Article it would be an unreasonable one - an inference drawn by the reader without any solid or sufficient basis in the information contained in or conveyed by the words used by the defendant.
31. Indeed, it seems to me that one aspect of Mr Sterling's argument lends support to this analysis. He has submitted that an important facet of the context is the emotive nature of the subject-matter - the Grenfell fire - and that for that reason the question of who was culpable would have gone through the mind of any reader of an article about the fire, affecting their response and hence the natural and ordinary meaning. Mr Sterling rightly did not suggest that the Article was sensationalist or emotive in its presentation. His argument was, in substance, that the reader would bring to the Article an additional emotional component, which would lead the reader to take away the inferential meaning for which the claimant contends. I do not think that can be right. Ordinary people may have all kinds of response to articles on emotive subjects, but I am concerned with the hypothetical reasonable reader. I would need persuading that there is any context in which an atmosphere of heightened emotion about the subject-matter of the words complained of could play a role in the determination of their meaning, for the purposes of a libel action. If there is such a context, this is not it. The hypothetical ordinary reasonable reader of this *Times* article would not have been driven by emotion to read in an imputation about the claimant which was not to be found in the express or implicit meaning of the words complained of, in their context.

32. To this extent, the claimant may regard this judgment as some form of vindication. I say that because I have noted that in correspondence and in the Particulars of Claim it has been said that many people in fact reacted adversely to the Article, so far as it concerns the claimant.
33. Mr Sterling is on rather firmer ground when it comes to his second main strand of meaning. He submits, and I can only agree, that the Article presents to the reader as significant the fact that the claimant is both (a) a senior executive from “the company that made the insulation boards” for Grenfell Tower and (b) “an adviser to the government on building regulations”. That is clearly the broad point made by the headline. The focus of the Article, when it comes to the claimant, is on his dual roles. The question is: what does the Article suggest is the significance of these dual roles?
34. Some of Mr Sterling’s submissions go beyond the boundaries laid down by the principles identified above, or outside the parameters of his pleaded meaning, or both. He submits that the headline itself implies that “there was something wrong in Mr Allen being a senior executive at Saint-Gobain, if, as we know, Saint-Gobain fitted the insulation boards, which proved highly flammable.” This goes well beyond what the reasonable reader could read into the headline, and is aptly characterised by Mr Scherbel-Ball as a “sensationalist approach” to meaning. Mr Sterling argues that Saint-Gobain’s conduct in charging the Council for supplying boards that proved highly inflammable (para [7]) “is presented as a wrong by Saint-Gobain and, by implication, Mr Allen”. This does not, or does not firmly, engage with the relevant strand of meaning, and is much too broad-brush. Mr Sterling’s submission that the fact that (according to the Article) the BRAC does not publish minutes “implies furtiveness ... by Mr Allen” is again hard to link with the pleaded meaning, and in any event presses a point much too far. Mr Sterling also suggests that paragraph [6] indicates wrongdoing on the part of the BRAC “in the form of bias and intransigence”. Again, that is not the nature of the pleaded imputation, and what is more this is a meaning that relates to BRAC, not the claimant. Mr Sterling submits that the Article makes “the clearest statement” that the claimant “should not be on the committee”. But it makes no statement to that effect at all. The only possible argument is that it implies as much. And the claimant has not pleaded a meaning that “the claimant should not have been on the BRAC”.
35. In oral argument, Mr Sterling has submitted that the Article presented the claimant as having two conflicts of interest, each of which would be improper. The first was being on the BRAC at a time when Saint-Gobain was dealing with local authorities. That is a version of the pleaded case. But I do not accept that argument. The submissions in support of it are not at all persuasive, for the reasons I have given. I agree with Mr Scherbel-Ball that it is artificial and contrived to suggest that the claimant acted with a conflict of interest merely by being on the BRAC while also a director of Saint-Gobain. The Article does not include any such statement. I do not believe that it implies as much. Indeed, it is hard to understand why those dual roles should, in and of themselves, involve a conflict of interest. It is not obviously inappropriate for industry experts to be on such a committee. The Article presents a reasoned case for having experts from the building industry on the BRAC. It would hardly be necessary to spell out the value of this. The Article does raise questions about the effectiveness of the BRAC, and suggest that it may have been unduly lax in its oversight of the regulations, but these are different points.

36. On the other hand, I do not fully accept the defendant's case about this aspect of the Article either. To argue that all the Article has to say about this claimant is an implied opinion or comment to the effect that his appointment to BRAC "may be inappropriate" in the circumstances is to underplay the implications of the reporter's choice of words, and the way the facts are presented in the Article.
37. The defendant accepts that the Article means that the claimant remains on the Committee "despite" certain matters. It could hardly do otherwise, given the wording of paragraph [4], containing the pivotal word "but". The defendant concedes that the matters presented as fact in the Article included (i) the claimant's role as a senior executive and technical director of the company involved in the manufacture of Celotex boards which (ii) were fitted to Grenfell Tower; (iii) were "highly flammable and suspected of contributing to the Grenfell fire"; and (iv) had been withdrawn from use on high-rise buildings. All those matters are presented to the reader before the reader arrives at the words "but Mr Allen remains on the committee ...". That is an allegation of conduct by Mr Allen. The ordinary reader would read in a clear implication that this was conduct which, in all the circumstances, was to be deprecated in some way, for some reason.
38. That was essentially Mr Sterling's second submission about conflict of interest. He argued that the Article suggested there was a conflict in the claimant remaining on the committee after the fire. As Mr Scherbel-Ball submits, however, this is a different way of putting the case from the one set out in the Particulars of Claim. The pleaded meaning makes no reference to the fire. Nor is this a meaning that was set out in the skeleton argument for the claimant. There has been no application for permission to amend the Particulars of Claim. Indeed, no meaning to this effect was formulated in writing on the claimant's behalf until after the hearing, in circumstances to which I shall come. It is easy to see why Mr Scherbel-Ball's submits that, in these circumstances, the claimant is not entitled to invite me to find that the words bear this meaning.
39. I have however formed a clear view about what is the natural and ordinary meaning of the Article, as it relates to the claimant. Before reading the parties' contentions or reading or hearing their arguments, I had identified a natural and ordinary defamatory meaning that is different from any of those advanced by the claimant or the defendant. I indicated as much to the parties, albeit without formulating the meaning itself.
40. This brings me to the jurisprudence to which I alluded above, concerning the degree to which the Court is free to, or should, find a meaning different from any put forward by the parties. Mr Scherbel-Ball submits that the authorities demonstrate that there are two limiting principles: (1) the Court cannot find a meaning that is more injurious than the claimant's pleaded meaning; (2) the Court should be slow to find a meaning different from that of which the claimant complains, when the claimant has repeatedly attempted to formulate a defamatory meaning but has chosen not to formulate the meaning which the Court may consider the words to bear
41. The first principle, submits Mr Scherbel-Ball, is absolute. The second is not, but it is, he says, "an important factor to be borne in mind when considering whether to determine that a publication bears a substantially new defamatory meaning when [the claimant] has chosen not to advance it despite having ample opportunity to do so."

42. Mr Sterling argues that the rules and authorities show that a claimant is not confined to the meanings pleaded in his statement of case, but can rely on a meaning contained in submissions. In written submissions lodged after the hearing (following an invitation from me to comment on two additional authorities), he refers to the freedom allowed to the Court under paragraph 4.1 of the Part 53 Practice Direction, the provision about rulings on “capability”. This permits the Court to identify a possible meaning of the words complained of, even if it is not a meaning complained of. Mr Sterling proposes for my consideration a variation on the second strand of the claimant’s pleaded meaning, which would add the words “and by remaining on the committee since the Grenfell fire”. It would, he submits, be in accordance with the overriding objective to permit or adopt this variation.
43. The classic statement of the law in this area is that of Diplock LJ in *Slim v Daily Telegraph* (above) at 175:
- “The plaintiffs, as they were entitled to do, chose to set out in their statement of claim the particular defamatory meaning which they contended was the natural and ordinary meaning of the words. Where this manner of pleading is adopted, the defamatory meaning so averred is treated at the trial as the most injurious meaning which the words are capable of bearing, and the plaintiff is, in effect, estopped from contending that the words do bear a more injurious meaning and claiming damages on that basis. But the averment does not of itself prevent the plaintiff from contending at the trial that even if the words do not bear the defamatory meaning alleged in the statement of claim to be the natural and ordinary meaning of the words, they nevertheless bear some other meaning less injurious to the plaintiff’s reputation but still defamatory of him, nor does it relieve the adjudicator of the duty of determining what is the right natural and ordinary meaning of the words, though nice questions may arise as to whether one meaning is more or less injurious than another. C’est pire qu’un crime c’est une faute.”
44. In *Dell’Olio v Associated Newspapers Ltd* [2011] EWHC 3472 (QB), the claimant sued in respect of an article to which, in her Particulars of Claim, she attributed the meaning that she was, or was reasonably suspected of being, “a serial gold-digger who cynically seeks out relationships with men not for genuine emotional reasons but because they are millionaires...” The defendant applied for a ruling, under PD53 4.1, that the words complained of were not *capable* of bearing that meaning. This was the only procedure then available to obtain a ruling on meaning. Tugendhat J upheld the defendant’s submission. He also accepted the defendant’s contention that the words complained of were not capable of bearing “any other defamatory meaning of which [the claimant] might complain.” He made clear that, in his view, there were limits on the meanings that it was appropriate for the Court to consider. At [31-32] he said this:-

“A court considering “whether the statement is capable of bearing any other meaning defamatory of the Claimant” cannot be required to proceed in a vacuum. There may be obvious potentially defamatory meanings (such as that a person is carrying on an adulterous relationship) which it would be

pointless for the court to consider, if the Claimant does not raise them.

... at least in the present case, it would be futile for the court to consider every possible defamatory meaning of the words complained of. The point has been raised by [the Defendant]. The Claimant has had an opportunity to advance another meaning. If she chooses not to do so, the court should respect that choice, but not permit her to advance another meaning, at least without a satisfactory explanation for her taking that course. I have regard to the fact that the Claimant has advanced a second meaning for the purposes of her Particulars of Claim, after advancing an earlier meaning in the Letter of Claim.”

45. By the time of *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB) [2015] 1 WLR 971, Parliament had abolished the presumption in favour of jury trial in libel cases (see Defamation Act 2013, s 11). This was thus one of the first cases in which the Court was able to decide the actual meaning of the words complained of, as a preliminary issue, as has now become commonplace. At [82], I said this:

“Where the court is ruling on what meanings words are *capable* of bearing it may rule on whether they are capable of bearing “any meaning attributed to them in a statement of case” or “any other meaning defamatory of the claimant”: CPR 53PD paras 4.1(1) and (3). I take the right approach to be similar when as here a judge is adjudicating at an early stage on what meanings the words complained of actually bear. The judge is not confined to the precise meanings advanced by the parties or to the wording of those meanings set out in the respective statements of case. The judge may find the words to bear some different meaning or meanings. But the judge should not normally make a finding of any meaning which is not either advanced to some extent in the statement of case or submissions of one or other party, or within the same class or range as a meaning so advanced.”

46. The extent to which it is appropriate for the Court to find, and for the claimant to rely on, a meaning different from any relied on by the claimant was considered, obiter, in *Tinkler v Ferguson*. This was a claim for libel and malicious falsehood relating to an announcement made on the London Stock Exchanges Regulatory News Service (“the Announcement”). Nicklin J tried preliminary issues. The Judge dealt first with the libel claim, making findings as to the single meaning of the Announcement, whether the imputations conveyed were (a) fact or opinion, (b) defamatory by the common law criterion, and (c) grave enough to raise an inference of “serious” reputational harm for the purposes of s 1 of the 2013 Act: [39-46]. He also tried meaning for the purposes of the malicious falsehood claim, but here his task was different, because the “single meaning rule” does not apply; a claimant can sue in respect of any meaning in which “a substantial number of persons would reasonably have understood the words”: *Ajinomoto Sweeteners SAS v Asda Stores Limited* [2010] EWCA 609 [2011] QB 497 [35], *Cruddas v Calvert* [2013] EWCA Civ 748 [2014] EMLR 5 [30]. That is a test very similar to the “capability” test that applied under PD53 4.1.

47. The meaning which Nicklin J had found was different from the meaning alleged by the claimant to be false and malicious. He reviewed the differences between libel and malicious falsehood principles, and at [54] said the following:

“Arguably, at the trial of a preliminary issue in a malicious falsehood action, either the meaning pleaded by the Claimant is held to be a capable meaning for malicious falsehood purposes or it is not. Can the Claimant amend in light of the Court’s ruling? I would be inclined to accept Ms Rogers QC’s submission that the Claimant’s pleaded meaning could be amended to remove certain words from so that it is consistent with the Court’s ruling, as the greater includes the latter. In that instance, there would be no need for any adjustment to the plea of falsity or malice. Whether it is open to a Claimant to have ‘another go’ at pleading a different malicious falsehood meaning seems to me to raise potential problems. Even assuming that the Claimant was willing (and able) to contend that the revised meaning was false and published maliciously, is it permissible to raise a “new case” after the preliminary issue has been decided? If that were to be possible, it would potentially raise the prospect of multiple preliminary issue trials of meaning. That would not be a course open to a Claimant if meaning had not been resolved as a preliminary issue but instead was tried with all other issues at a single trial.”

48. More recently, Nicklin J has given further consideration to such issues, in the context of defamation. In *Hewson v Times Newspapers Ltd* [2019] EWHC 1000 (QB), the claimant advanced meanings that it was “highly likely or reasonably suspected” that the claimant committed certain criminal acts. These were meanings at or around Chase Level two. The defendant maintained that the articles complained of meant there were “grounds to investigate whether” she had done so (Chase Level three). Directions were given for the trial of meaning as a preliminary issue. The claimant then applied for permission to amend to add, as her primary case, that the words meant that “the claimant committed or it is almost certain that she committed” the criminal acts. These were meanings at or around Chase Level one. Objection was taken on the basis that it was settled law that the claimant’s pleaded meaning serves to define the high watermark of her claim in defamation. Reliance was placed on the words of Diplock LJ in *Slim*, and the principles relating to “very late amendments”, and reference was made to *Dell’Olio*.
49. Ultimately, Nicklin J held that the real issue was whether the Court’s discretion should be exercised to allow the pre-trial amendment applied for, and he permitted it. But at [24] he said this, obiter:

“*Slim* is the source of the principle that the Claimant cannot ask the Court to find a meaning that is higher than his or her pleaded meaning. The origins of and justification for that rule were rooted in practicality and good case management. When libel actions were tried by juries, a Claimant could not invite the jury to find a meaning higher than he or she had pleaded, because to do so would be substantially to move the goalposts at trial. For example, a defendant who had pleaded a defence of truth to the

originally-pleaded meaning, or a substantially similar *Lucas-Box* meaning, might then be facing a wholly different case without the opportunity properly to prepare for it. The rule in *Slim* was therefore an “anti-ambush” provision. It could be argued that, in the era where meaning is tried as a preliminary issue, and in advance of any trial of any substantive defence, the rule loses some of its force. Indeed, it might be thought to insert artificiality into the process. If it is the Court’s role to determine the single meaning, why should that be constrained by the interpretation advanced by the Claimant?”

50. This is a situation in which, as so often, the Court has to reconcile competing imperatives. The overriding objective includes achieving a just outcome. Like Nicklin J, I do not believe that in the modern era the Court should be absolutely barred from finding a meaning which is more serious than one contended for by the claimant. On the other hand, caution is required. Civil litigation is an adversarial process, governed by rules which need to be adhered to if procedural fairness is to be achieved. Statements of case play a vital role in achieving that aim, and ensuring a level playing-field. I do not regard PD53 4.1 as providing helpful guidance. It is a relic of a previous era, when all the Court could ordinarily do about meaning was to make a preliminary ruling, setting the outer limits of the arguments to be advanced on a later date, at a trial before a jury. Trials on meaning are not meant to be provisional or preliminary; they are meant to provide a final determination of one or more of the issues in a claim.
51. The authorities on late amendment show that, as a general rule, a party should not be allowed to advance at trial a case which significantly departs from the pleaded case, and which that party has had ample opportunity to formulate beforehand. This principle does not depend upon proof that such departure would cause prejudice to the opposing party, although it is all but inevitable that it will do so. In my view, this principle should apply equally to issues about the meaning of allegedly defamatory words. The meanings complained of by a libel claimant have a profound impact on the way a defendant conducts the case. Trials on meaning are carefully prepared, on the basis of the meanings advanced in the formal statements of case and/or in some other written form. Any modification of substance to a claimant’s case ought to be formulated in writing, and made the subject of a formal application in good time, well in advance of the trial skeleton arguments. It is not good enough to do this “on the hoof” at the hearing, only reducing the point to writing after the event, without any formal application for permission to amend.
52. I would therefore reject Mr Sterling’s broad submission, that a claimant can always change his case at trial, and advance submissions which invite the court to depart from the pleaded case. This will normally be unfair, and therefore impermissible. There may be cases in which the Court would allow a less formal approach. The prevalence in this field of litigants acting in person, without legal representation, is one reason for that. Another is the fact that the meaning of words is a peculiar kind of issue. Meaning can be such a slippery thing that, represented or not, litigants sometimes fail to encapsulate the real gist or nub of an offending statement. There may be other factors that would justify a departure from the ordinary procedural requirements. But none of this applies here. This claimant is not entitled to have the Court adjudicate against this defendant on the informal basis proposed.

53. That does not answer the question of what the Court may do about meaning, if it concludes that there is or may be a defamatory meaning, different from any contended for by the parties. There is no dispute that the Court has a degree of freedom in that regard. I have reservations about Mr Scherbel-Ball's first principle, as I have indicated. For the purposes of this case, however, I am prepared to work on the assumption that Mr Scherbel-Ball's second principle correctly encapsulates the relevant effects of the authorities I have mentioned. I readily accept his submission that, in making a decision on this point, the Court should consider the overriding objective, and the risks to the efficient administration of justice in allowing a substantially new meaning to go forward. I am not sure, though, that this last submission quite addresses the point.
54. The Court in deciding meaning is not necessarily allowing a meaning to "go forward", as Mr Scherbel-Ball puts it. If the Court decides that the words bear a meaning that is materially different from that proposed by the claimant, the same rules about amendment will apply. The claimant will have the option of seeking to amend his case. If he does not, and his pleaded meanings have been rejected, his claim will fail. If the claimant wishes to amend, he will have to seek permission. All of this will have predictable effects on costs. These considerations have some impact on my decision.
55. The meaning that I have arrived at, though not the same as any proposed by the claimant, is of the same general nature as the claimant's second strand. To adopt what I said in *Yeo*, it is within the "same class or range". I do not regard it as "substantially new", within Mr Scherbel-Ball's formulation. I am not sure that it is a more serious imputation than the second strand of the claimant's meaning. That is not altogether easy to determine, given what I have said about that strand, in its pleaded form. My meaning is certainly not more serious than the first strand of the claimant's pleaded meaning. The meaning I have identified is not one that, in my view, the claimant has "chosen" not to advance. This is not a case like *Dell'Olio*, where the Court could safely conclude that the claimant had made a considered decision not to pursue a particular category of complaint. In all these circumstances, I do not think it unfair or inappropriate to announce my finding.
56. The single meaning which I find the Article to bear is that the claimant misconducted himself by remaining on the BRAC when it discussed the Grenfell Tower fire the week before the Article: by doing so despite the facts that (a) he was a senior executive and technical director of the company that made the Celotex insulation boards, which (b) were fitted to the Tower, (c) had proved on investigation to be highly flammable, and thus come under reasonable suspicion of being implicated in the spread of the fire, and (d) been withdrawn from sale, he placed himself in a situation of conflict of interest. The conflict suggested (though this is not a necessary part of the meaning) would be one where the claimant's duty as a member of the BRAC came into conflict with his duty or interest as a senior executive of Saint-Gobain.
57. This is an implicit meaning which flows principally from the headline and first four paragraphs of the Article, and in particular from paragraphs [3] and [4]. Central to it is the antithesis set up in [4] by the use of the word "but". It is that word that gives rise to the implied meaning, conceded by the defendant, that the claimant remained on the committee "despite" the stated facts. There is a feature of paragraph [4] which neither party has drawn attention, but which seems to me to be very important: the Article tells the reader that the claimant remained on the Committee "*that met last week to discuss Grenfell*". In other words, as a senior officer of the company whose product was under



suspicion of playing a part in the disaster, he not only remained on the committee “which advises the communities and local government secretary” on building regulations, but he took part in a meeting to discuss the disaster in which Celotex had recently been implicated. It is self-evident, or at least the ordinary reader would conclude, that a BRAC member is obliged to act impartially, in the public interest, when providing advice to government about the building regulations. The Article would indicate to the reader that there was a conflict because the claimant had a duty to protect his employer and its products and/or vested interest in doing so, in respect of the causes of the fire and the adequacy or otherwise of the relevant regulations. There is no suggestion that he declared his interest, or (more importantly) recused himself from discussions about, or relevant to the role of, Celotex. In the absence of any such suggestion the reader would naturally take it that the claimant took part on the discussions referred to.

58. There are two other features of the Article that lend support to this implied meaning. The first is the suggestion within paragraphs [6] and [7] that the BRAC is not independent of, but biased in favour of the building industry, and for that reason has failed to ensure that the regulations were kept up to date in relevant ways. The second is paragraph [15], reporting that Celotex declined to comment on the claimant’s committee role. That clearly indicates that there was something on which comment could be expected.
59. In my judgment, this meaning (in the context of the topic in question) is a defamatory meaning at common law, applying the *Thornton* threshold.

## Appendix

### TOWER BLOCK FIRE

# Grenfell cladding boss is a government adviser

Sean O'Neill, Chief Reporter

July 1 2017, 12:01am, The Times

[1] *A senior executive from the company that made the insulation boards fitted to Grenfell Tower is an adviser to the government on building regulations.*

[2] *Mark Allen, technical director of Saint-Gobain UK, which makes Celotex insulation, is on the Building Regulations Advisory Committee (BRAC), which advises Sajid Javid, the Communities and Local Government Secretary.*

[3] *Scotland Yard said last week that its investigation into the fire, which claimed at least 80 lives, had found that the Celotex RS5000 insulation boards fitted in a large refurbishment project had proved highly flammable. Although classified as "low risk" in terms of fire, police said "the insulation samples collected from Grenfell Tower combusted soon after the tests started".*

[4] *The product has been withdrawn from use on high-rise buildings but Mr Allen remains on the committee that met last week to discuss Grenfell.*

[5] *BRAC members are appointed by the Secretary of State. It meets three times a year but does not publish minutes.*

[6] *Fire safety experts complained that the committee is "heavily weighted towards the building industry" and has proved "difficult to engage with".*

[7] *There is concern that regulations have failed to keep pace with changes in construction techniques and the development of new types of materials, including the kind of external cladding used in the £8.6 million Grenfell refit.*

[8] *Cladding materials have been fitted to thousands of buildings and the continuing 100 per cent failure rate in tests on sample from blocks of flats few criticism of the process yesterday.*

[9] *Panels on 149 buildings from 45 local authority areas are described as having failed the tests, which are narrowly focused on the core material in cladding.*

[10] *Sample panels are taken from buildings to fire-testing houses where they are taken apart and small fragments of the core material removed. This is then burned in pure oxygen to find if they are flammable, fire retardant and therefore burn slowly, or non-combustible.*

[11] *Lord Porter of Spalding, chairman of the Local Government Association, said the tests were flawed as they were not examining panels in their entirety and not looking at insulation boards which, as in Grenfell, are fixed behind the cladding.*

[12] *After the comments, the expert panel set up by Mr Javid after the fire said that the tests would not always mean cladding had to be removed from buildings. The panel said its approach*

was to conduct “screening tests” to determine what was in panels so measures could be taken to ensure residents were safe.

[13] The Fire Protection Association had to conduct a postcard lobbying campaign to secure a meeting with the BRAC as it sought tighter fire-safety measures on building regulations.

[14] It is concerned that the regulations have not been fully reviewed for more than ten years and are “not fit for the prescription of new building and refurbishment methods and materials”.

[15] The government said the BRAC was made up of volunteers chosen by the ministers for their experience and expertise. A Celotex spokesman declines to comment on Mr Allen’s committee position.

### **Key players at Kensington Council**

[16] **Nicholas Paget-Brown** began climbing through the ranks at Royal Borough of Kensington and Chelsea, Britain’s richest borough, soon after leaving York University (David Brown and Sean O’Neill write).

[17] Aged 60, he lives in an apartment in Chelsea, three miles from Grenfell Tower – but a world away socially.

[18] When he stood successfully for elections as leader of the council in 2013 he highlighted his role as managing the regeneration budget for north Kensington, the area that includes Grenfell Tower. As leader of the council he was paid allowances totalling £64,467 a year.

[19] **Rock Fielding-Mellen** might have been expected to take the job at Kensington council but criticism of him has grown since the Grenfell disaster. Aged 38, he was housing committee chairman, had oversight of all housing regeneration projects and took an active interest in the block’s refurbishment.

[20] The son of Amanda Fielding, Countess of Wemyss and March, he grew up in a bohemian, aristocratic family near Oxford but lives locally.

[21] **Robert Black** worked in the housing sector for 18 years before he joined the quasi—private company KCTMO, which runs the royal borough’s public housing, in 2009. He is a Glaswegian who is said by friends to be a “working-class boy made good”. Mr Black, 57, was one of the “key management personnel” at the organisation who, according to the 2015-16 accounts, had salaries totalling £650,000.